

MEMORANDUM

OCTOBER 18, 1984

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: STEPHEN COYLE, DIRECTOR

SUBJECT: WATERFRONT PROJECT, MASS. R-77, TENTATIVE DESIGNATION OF TRUSTEES OF THE CUSTOM HOUSE BLOCK TRUST AS REDEVELOPER OF THE PROPOSED ADDITION TO THE CHART HOUSE

The Trustees of the Custom House Block Trust propose to lease from the Boston Redevelopment Authority a parcel of land adjacent to the historic Gardner Building, the latter which is owned by the Trust. An addition to the building would be constructed which would enclose the leased parcel in a glass and steel frame structure. The purpose of such an addition is to expand the facilities of the Chart House restaurant, which is the sole lessee of the Gardner Building from the Trust. The Authority-owned parcel adjacent to the Chart House measures approximately 3,000 square feet.

The Authority has made an initial review of the proposal based initially on design. It is felt that a glass enclosed addition, similar to those in the Faneuil Hall Marketplace will add life and vitality to this area and will coincide with the Authority's efforts in the reconstruction of Long Wharf.

The tentative designation would provide that the Authority-owned parcel necessary for the glass addition would be leased to the developers at a minimum annual rent of three dollars (\$3.00) per square foot of gross building area, thereby ensuring the appropriate minimum pro rata rent to the Authority, no matter what the size of the addition is after final design review. The minimum rent alone, we estimate, would approximate \$9,000 per year. There will also be additional terms providing for additional rent of 10% of gross sale volume above a proscribed amount, as more definitively outlined in the attached Lease Commencement Agreement Summary.

It is, therefore, recommended that the Authority tentatively designate the Trustees of the Custom House Block Trust as redeveloper of the approximately 3,000 square foot parcel adjacent to the Chart House, with the final issues of design review, construction cost, and resulting increase in real estate taxes to be resolved prior to final designation.

An appropriate Resolution is attached.

THE GARDNER BUILDING EXTENSION LEASE COMMENCEMENT AGREEMENT SUMMARY

Within 90 days of Tentative Designation, the designated developer and the Boston Redevelopment Authority (BRA) will enter into a Lease Commencement Agreement containing the conditions of Final Designation. The Lease Commencement Agreement will be based on the terms and conditions specified below. These terms will be incorporated in a land lease which will become effective upon Final Designation.

PROPERTY: Approximately 3000 SF on the northern side of the Gardner Building, as designated by Lessor

LESSOR: Boston Redevelopment Authority

LESSEE: The Trustees of the Custom House Block Trust

TERM: To be coterminous with the current Chart House Enterprises lease.

RENEWAL: Lessor retains the right to extend, amend, or terminate upon expiration of the Chart House Enterprises lease.

FINAL DESIGNATION: Not more than 180 days from the execution of the Lease Commencement Agreement, subject to extension by mutual agreement of Lessor and Lessee.

LEASE COMMENCEMENT DATE: Simultaneous with Final Designation.

NET RENT:

- A. Pre-construction rent of \$201 per annum will continue until the lease commencement date.
- B. Base Rent - \$3 per FAR GSF per annum payable monthly in advance, commencing at the earlier of the Lease Commencement Date or 250 days from the tentative designation.
- C. Percentage Rent - 10 percent of annual gross sales of the sub-lessee above an amount to be specified before final designation, and payable monthly in advance based on a budget prepared annually and submitted to Lessor not less than 60 days prior to the beginning of each fiscal year. The annual gross sales amount to be specified shall be determined by capitalizing the lessee's costs at 5 percent. Lessee's costs shall include the following items: certified operating expenses, real estate taxes, Base Rent, and debt service. Within 90 days of the end

of each fiscal year Lessee shall submit a calculation of Percentage Rent for that year certified by a CPA acceptable to Lessor and shall make a payment or receive a credit of Percentage Rent based on the certified statement. Until the annual Percentage Rent amount is certified, and payments and credits are allocated, the monthly Percentage Rent payment in any fiscal year shall be no less than one-twelfth of the fiscal year.

SUBORDINATION: Lessor's fee interest in the Property will not be subordinated. Lessor's Base Rent will not be subordinated. Percentage Rent will not be subordinated. In the event of a foreclosure, the Lessor may defer Percentage Rent for a period of time sufficient to allow lender to cure.

FINANCING: Any initial permanent financing may not exceed certified total project costs.

REFINANCING: Refinancing is not relevant to this lease. If refinancing occurs, the gross sales threshold for the calculation of percentage rent will not change.

SALE: Lessor will receive as Additional Rent 10 percent of net sales proceeds upon sale.

ALIENATION: A. Lessee may not dispose of its interest without the written consent of Lessor.
B. The Lessee will have a right of first refusal in the event that the Lessor proposes to sell or otherwise dispose of its interest.

**ESTOPPEL
CERTIFICATE:** Lessor agrees to provide any lender that notifies the Lessor of its mortgage interest with an Estoppel Certificate granting such lender notice of default and right to cure as may reasonably be required.

**CONSTRUCTION
OF
IMPROVEMENTS:** A. Lessee must make improvements on the Property in accordance with plans and specifications approved by Lessor as part of Lessee's Final Designation within 12 months of such Designation.
B. The Lessor reserves the right to review and approve any future alterations to the property.

BOOKS AND
RECORDS:

Lessee must provide Lessor with a statement of project costs computed in accordance with the Land Lease, certified by a CPA, and approved by the Lessor, within 120 days of issuance of a final certificate of occupancy. Lessor will use industry standards as a guide to Lessor's approval.

In addition to the reports required for the Percentage Rent calculation, Lessee must provide Lessor with a statement of operation certified by a CPA, and approved by the Lessor, within 90 days of the close of each fiscal year. Lessor will use industry standards as a guide to Lessor's approval.

AFFIRMATIVE
ACTION:

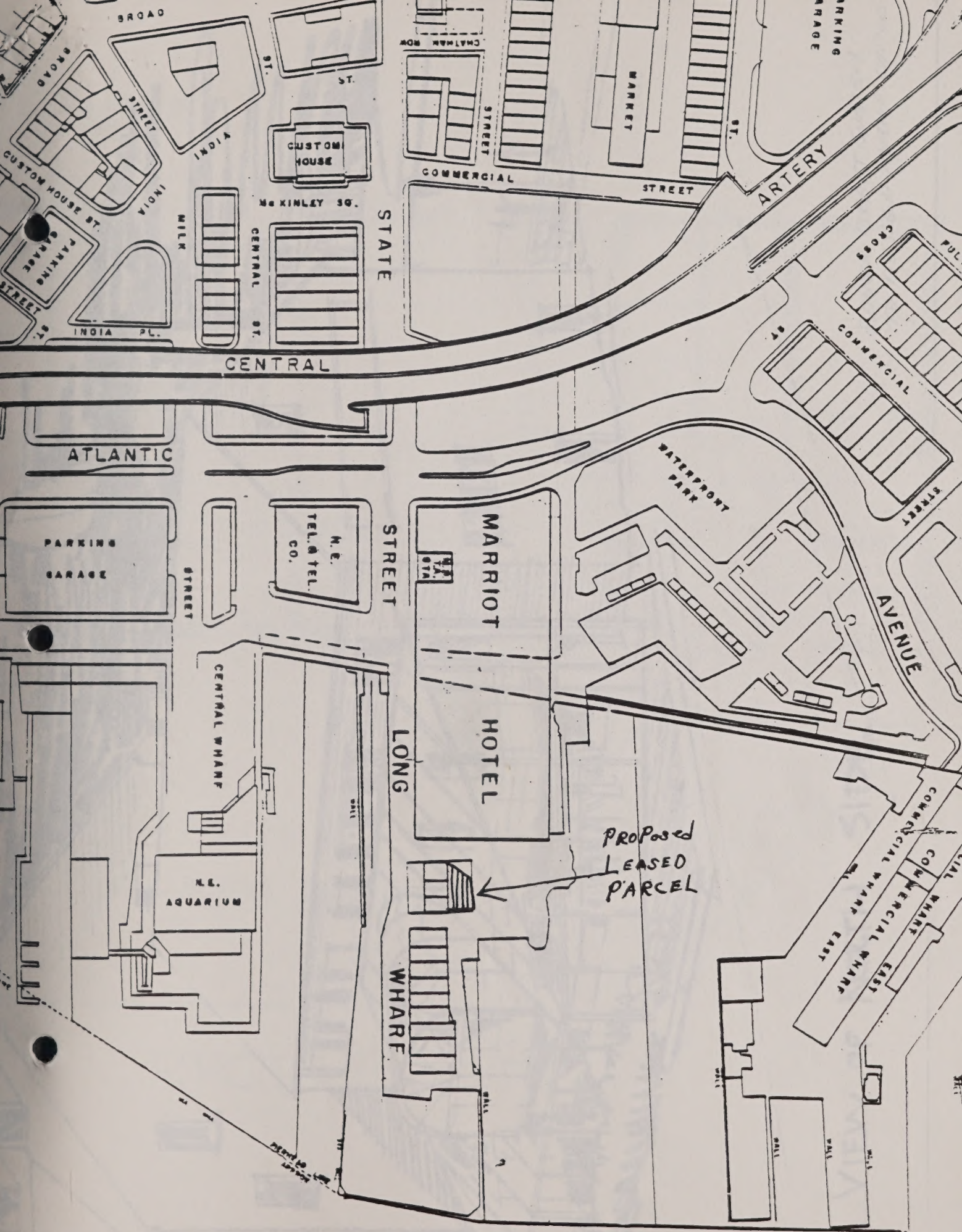
Lessee must comply with the Mayor's Executive Order concerning Affirmative Action goals for construction employment, permanent employment and minority business contracting. The Lessor will assist the Lessee in meeting these goals.

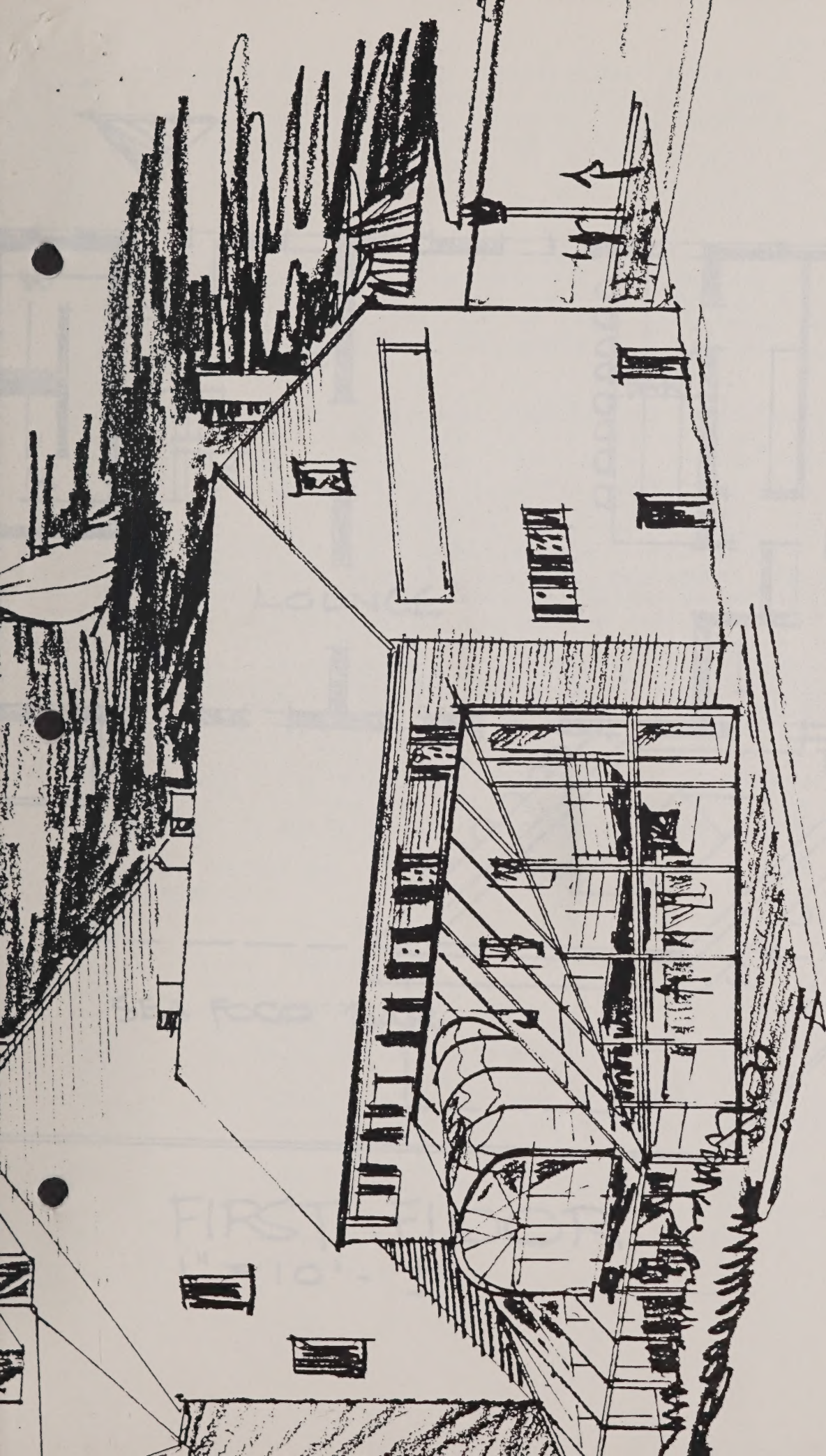
REAL ESTATE
TAXES:

The Property will be fully taxable by the Assessor of the City of Boston at applicable rates.

LIABILITY:

Lessor and the City of Boston will not incur any expenses in the development of the Property. The Property will be leased in an "as is" condition. Lessee will pay for the cost of any utility relocation not paid by any utility company.

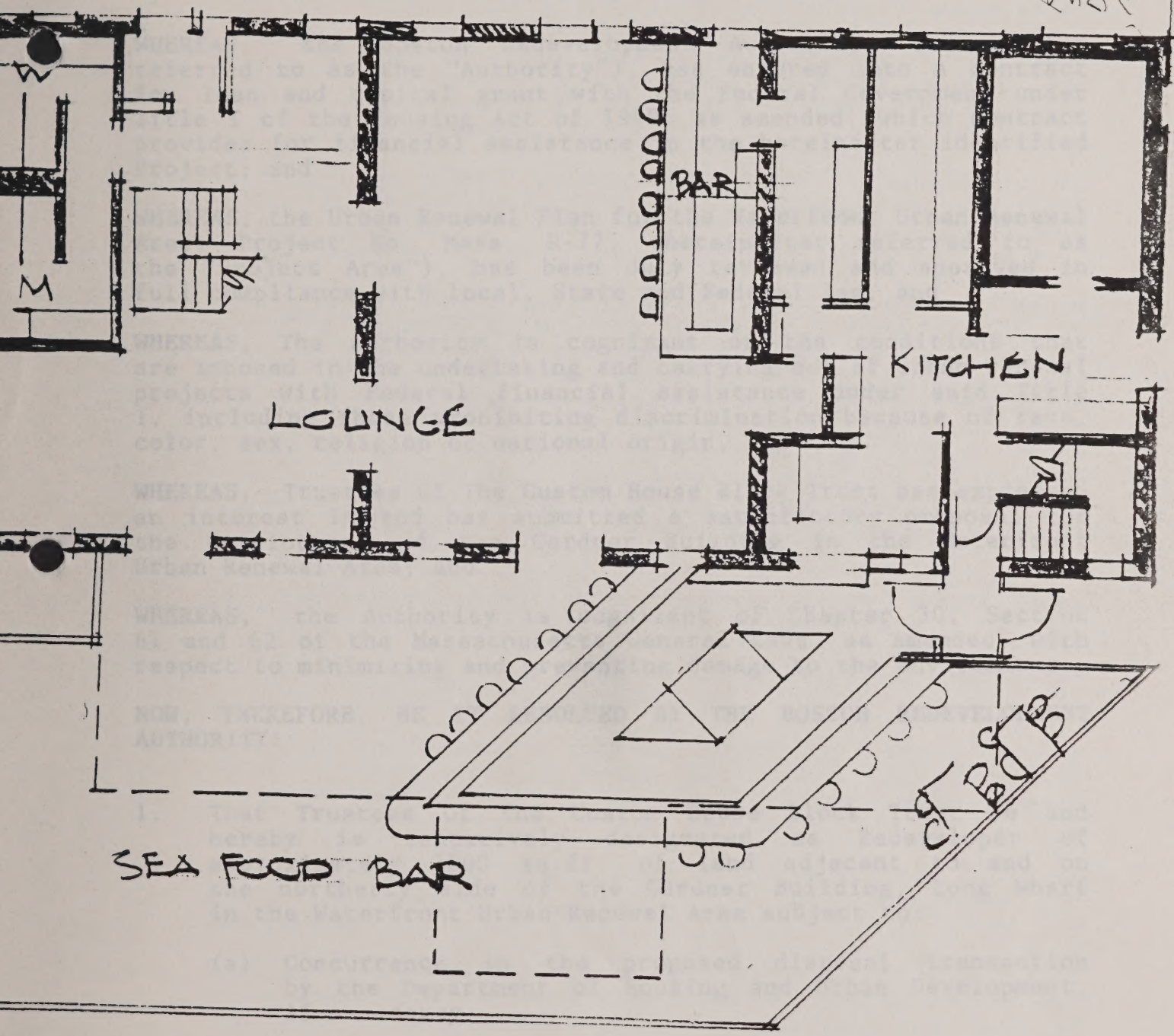




VIEW OF NORTH SIDE

ROUGH DRAFT SUBJECT
TO DESIGN MODIFICATION

ROUGH DRAFT
SUBJECT TO
DESIGN
MODIFICATIONS



FIRST FLOOR

1" = 10' ±

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY
RE: TENTATIVE DESIGNATION OF REDEVELOPER. AREA
ADJACENT TO GARDNER BUILDING, LONG WHARF IN
THE WATERFRONT URBAN RENEWAL AREA
PROJECT NO. MASS. R-77

WHEREAS, the Boston Redevelopment Authority, (hereinafter referred to as the "Authority"), has entered into a contract for loan and capital grant with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the hereinafter identified Project; and

WHEREAS, the Urban Renewal Plan for the Waterfront Urban Renewal Area, Project No. Mass. R-77, (hereinafter referred to as the "Project Area"), has been duly reviewed and approved in full compliance with local, State and Federal law; and

WHEREAS, The Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects with Federal financial assistance under said Title I, including those prohibiting discrimination because of race, color, sex, religion or national origin, and

WHEREAS, Trustees Of The Custom House Block Trust has expressed an interest in and has submitted a satisfactory proposal for the development of the Gardner Building in the Waterfront Urban Renewal Area; and

WHEREAS, the Authority is cognizant of Chapter 30, Section 61 and 62 of the Massachusetts General Laws, as amended, with respect to minimizing and preventing damage to the environment:

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That Trustees Of The Custom House Block Trust be and hereby is tentatively designated as Redeveloper of approximately 3000 sq.ft. of land adjacent to and on the northerly side of the Gardner Building, Long Wharf in the Waterfront Urban Renewal Area subject to:
 - (a) Concurrence in the proposed disposal transaction by the Department of Housing and Urban Development, if necessary;
 - (b) Publication of all public disclosure and issuance of all approvals required by the Massachusetts General Laws and Title I of the Housing Act of 1949, as amended;

(c) Submission by the Redeveloper to the Authority the following Lease provisions and acknowledgements.

(i) A Lease Commencement Agreement will be executed within ninety (90) days of tentative designation and the developer further agrees to comply with all the requirements necessary for final designation and lease execution within one hundred eighty (180) days of execution of Lease Commencement Agreement.

(ii) The Lease commencement date is agreed to be simultaneous with Final Designation and said Lease will be for a term to be coterminous with the current Chart House Enterprises lease.

(iii) The Lease base rent--\$3 per FAR GSF per annum payable monthly in advance, commencing at the earlier of the Lease Commencement Date or 250 days from the tentative designation and the Lease shall provide for a percentage rent of 10% of annual gross sales of the sub-lessee above an amount to be specified before final designation, and payable monthly in advance and additional income requirements detailed in the Lease Commencement Agreement Summary attached.

(d) Submission within one hundred eighty (180) days in a form satisfactory to the Authority of:

(i) Evidence of the availability of necessary financing for project; and

(ii) Preliminary working drawings and outline specifications consistent with this designation and the controls of the Waterfront Urban Renewal Plan.

2. That disposal of the parcel by negotiation is the appropriate method of making the land available for development.

3. That it is hereby determined that Trustees of the Custom House Block Trust possess the qualifications and financial resources necessary to acquire and develop the land in accordance with the Urban Renewal Plan for the Area.

4. That it is hereby found and determined that the proposed development will not result in significant damage to or impairment of the environment and, further, that all practicable and feasible means and measures have been taken and are being utilized to avoid or minimize damage to the environment.
5. That the Director is authorized to issue a license to Trustees Of The Custom House Block Trust for early entry to the site for test borings and other related survey work prior to final designation and to execute a Lease Commencement Agreement incorporating the above terms and conditions.
6. That the Secretary is hereby authorized and directed to publish notice of the proposed disposal transaction in accordance with Section 105 (E) of the Housing Act of 1949, as amended, including information with respect to the "Redeveloper's" Statement for Public Disclosure" (Federal Form H-60040).